

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
SAN FRANCISCO, CALIFORNIA**

<b>In the Matter of:</b>	)	
	)	<b>R9-2001-14</b>
<b>Pegasus Power Partners LLC</b>	)	
	)	<b>Administrative Order on Consent</b>
<b>Chino Project</b>	)	<b>42 U.S.C. §7413(a)(1), (4)</b>
_____	)	

**I. Findings of Fact:**

WHEREAS, on January 17, 2001, Governor Davis of the State of California proclaimed a State of Emergency due to the shortage of electricity in California and beginning on February 8, 2001, issued Executive Orders (the “Executive Orders”), directing the California regulatory authorities to implement numerous actions designed to increase the generation of electricity in California;

WHEREAS, Executive Order D-24-01 signed on February 8, 2001, directed the California Air Resources Board (“ARB”) to modify permit limits that could limit electricity generation;

WHEREAS, Executive Orders D-26-01 signed on February 8, 2001, D-28-01 signed on March 8, 2001, directed the California Energy Commission (“CEC”) to expedite the processing of applications for power plants that can be on line by September 30, 2001;

WHEREAS, Pegasus Power Partners, LLC (“Pegasus”) filed an emergency application for certification with the CEC on April 27, 2001, for a 185 MW power plant consisting of four (4) General Electric (GE) LM6000 Enhanced Sprint simple cycle

natural gas turbines three (3) of which will be built during the effective period of this order) to be located on Eucalyptus Avenue at the California Institution for Men in the City of Chino, San Bernardino County, California (the “Chino Project”);

WHEREAS, in April 2001, Pegasus filed applications for New Source Review (“NSR”) Authority To Construct Permits (“ATCs”) from the South Coast Air Quality Management District (“SCAQMD”) to allow the construction and operation of the Chino Project;

WHEREAS, on or about May 23, 2001, the SCAQMD issued notices of intent to issue ATCs for the Chino Projects, which initiated a 30-day public comment period;

WHEREAS, the proposed ATCs require the Chino Project to install and operate a pollution control system to limit emissions of oxides of nitrogen (“NOx”) to a concentration of 5 ppm or lower to satisfy LAER/CA-BACT, and Pegasus has agreed to install a hot gas selective catalytic reduction (“SCR”) emission control system that will limit NOx emissions to 11.28 lbs./hr (no greater than 5 ppm);

WHEREAS, Pegasus has indicated that its application before the California Energy Commission requires the Chino Project to be on line by the target date of September 30, 2001, and Pegasus has represented that it must begin actual construction on the Chino Project by June 11, 2001 in order to meet the on line date of September 30, 2001;

WHEREAS, Pegasus has demonstrated to the SCAQMD that it cannot obtain, install and operate the SCR technology by September 30, 2001;

WHEREAS, SCAQMD has filed a Petition for a Stipulated Order of Abatement to allow Pegasus to operate the three constructed turbines at the Chino Project without

LAER/CA-BACT until but no later than April 1, 2002, and SCAQMD and Pegasus intend to enter into an agreement under which Pegasus will pay a mitigation fee to SCAQMD based in part on NO<sub>x</sub> emissions that exceed the rate for LAER/CA-BACT;

WHEREAS, the CEC certified the Chino Project on June 1, 2001;

WHEREAS, the Clean Air Act, 42 U.S.C. § 7401 et seq. (the “Act”), as implemented through 40 C.F.R. §§ 51.160 - 51.165, requires that the SCAQMD State Implementation Plan (“SIP”), contain regulations applicable to the construction and modification of “major stationary sources,” including the prohibition that a “major stationary source” may not begin actual construction without first obtaining a permit to construct;

WHEREAS, the SIP requires that no person may “build, erect, install, alter or replace any equipment, the use of which may cause the issuance of air contaminants or the use of which may eliminate, reduce or control the issuance of air contaminants without first obtaining written authorization [an ATC] for such construction from the Executive Officer” (SCAQMD Rule 201), and that the ATC include requirements for LAER/CA-BACT and offsets (SCAQMD Rule 1302);

WHEREAS, the Act and SIP also require any person who operates a stationary source that emits air pollutants to comply with the conditions of the ATC at all times, including but not limited to operating in compliance with LAER/CA-BACT limits;

WHEREAS, the Chino Project is subject to the federal and state NSR permitting provisions discussed above;

WHEREAS, the SCAQMD will not be able to issue final ATCs that fully comply with the NSR provisions of the SIP to Pegasus for the Chino Project until after June 6,

2001;

WHEREAS, the Chino Project is not allowed to commence operation under this Order without having received final ATCs from the SCAQMD;

WHEREAS, Pegasus has indicated that due to the above stated reasons, it will not be able to meet a LAER/CA-BACT limit of 5 ppm up to six (6) months after beginning commercial operation;

WHEREAS, California has indicated that immediate construction and operation of the Chino Project will help reduce blackouts and other adverse consequences of the energy supply emergency in the state, as demonstrated by Governor Davis' Executive Orders and in the CEC decision to certify the Chino Project;

WHEREAS, the SCAQMD has determined that the additional NO<sub>x</sub> emissions that may be emitted by the turbines at the Chino Project for the duration of this Order are unlikely to cause any air pollution standards to be exceeded or cause any significant impact on public health because the SCAQMD and ARB anticipate providing offsets for all net emission increases of NO<sub>x</sub> during that period of operation;

WHEREAS, the United States Environmental Protection Agency, Region 9 ("EPA"), ARB, and Pegasus (collectively designated as the "Parties") agree that in order to alleviate the current energy generation shortage and to avoid potential blackouts in California, this Order is in the public interest; and

WHEREAS, Pegasus represents that its purpose in entering into this Order and beginning actual construction of the Chino Project before receiving final ATCs, and in operating at levels above the LAER/CA-BACT limits in the ATCs for a 9 month period, is to assist the State of California in meeting the Governor's objective to provide

additional electricity for California by the target date of September 30, 2001.

NOW, THEREFORE, the Parties agree that:

## **II. Definitions**

Unless otherwise expressly provided herein, terms used in this Order shall have the meaning given to those terms in the Act, and the regulations promulgated thereunder, and in the SIP. In addition, the following definitions shall apply to the terms contained within this Order:

1. “LAER/CA-BACT” shall mean the Lowest Achievable Emission Rate, as defined by Section 173 of the Act, and regulations located at 40 C.F.R.

§51.165(a)(1)(xiii), and California BACT as defined in SCAQMD Rule 1302.

2. “Day” or “day” shall mean a calendar day;

3. “Effective Date” shall mean the last date this Order was signed by the Parties;

4. “Effective Period” shall mean the period starting the Effective Date and ending the Termination Date (see Section VIII);

5. “Pegasus” shall mean Pegasus Power Partners LLC and its successors and assigns, and its officers, directors, agents, servants, and employees in their capacities as such;

6. “Order” shall mean this Administrative Order on Consent.

## **III. Conclusions of Law:**

### **1. Authority to Issue Order**

EPA has the authority to enter into this Order pursuant to Section 113 of the Clean

Air Act, 42 U.S.C. § 7413. Section 113(a)(1), (4) grants the Administrator of EPA the authority to make findings of violation and to issue orders requiring persons in violation of the Act to come into compliance. This authority has been delegated to the Regional Administrator, EPA, Region 9 and redelegated to the Director, Air Division, EPA, Region 9.

By entering into this Order, the Parties agree that EPA is providing adequate notice of EPA's allegation that Pegasus will be in violation of the SIP if it begins actual construction before Pegasus receives final ATCs, and if Pegasus emits NO<sub>x</sub> at levels above those permitted by the final ATCs. Pegasus has not admitted that it is in violation of any requirement of the Act or SIP.

## 2. Applicability and Binding Effect

This Order shall apply to and be binding upon the EPA, ARB and Pegasus, its successors and assigns, and its officers, directors, employees in their capacities as such, assignees and delegates and all other persons and entities as provided for in FRCP 65(d).

During the Effective Period of this Order, Pegasus shall give written notice and a copy of this Order to any successors in interest at least thirty (30) days prior to any transfer of ownership of any portion of the Chino Project, any assignment of rights concerning, or delegation of duties relating to, any of the operations of the Chino Project. Pegasus shall condition any transfer, in whole or in part, of ownership, operation, or other interest of the Chino Project upon acceptance by the transferee of the terms and conditions of this Order. Simultaneously with such notice, Pegasus shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation, Pegasus shall not be released from the obligations or

liabilities of this Order unless EPA has approved the release of said obligations or liabilities.

#### **IV. Order To Comply:**

Pursuant to Section 113(a)(1), (4) of the Act, 42 U.S.C. §7413(a)(1), (4), the Director of the Air Division, Region 9, hereby issues this Order requiring Pegasus to comply with the following terms and conditions while this Order is in effect:

1. Any construction of the Chino Project undertaken during the Effective Period of this Order shall be consistent with the draft ATCs prepared by the SCAQMD and noticed for public comment on May 23, 2001, including but not limited to installation of SCR to satisfy a NO<sub>x</sub> concentration limit of 5 ppm or lower as LAER/CA-BACT;

2. The LAER/CA-BACT analysis for the Chino Project by the regulatory agencies shall be conducted as it would be for any proposed project and shall not be prejudiced by the fact that Pegasus will have begun construction of the Chino Project pursuant to this Order;

3. Prior to operation of the Chino Project, Pegasus shall comply with all applicable SCAQMD offset and RECLAIM RTC requirements;

4. Pegasus shall notify EPA and ARB within five business days of its receipt of final ATCs for the Chino Project from the SCAQMD.

5. Pegasus may commence operating the Chino Project only after receiving final ATCs from SCAQMD, but prior to installation of LAER/CA-BACT provided Pegasus meets the following conditions:

a. By no later than April 1, 2002, Pegasus shall have installed on each

constructed turbine SCR as approved by SCAQMD;

b. On or before December 15, 2001, Pegasus shall submit to SCAQMD, EPA and ARB, a status report showing that it will be in compliance with the LAER/CA-BACT rate in its final ATC no later than April 1, 2002.

**V. General Provisions:**

1. Any modification of this Order shall be by agreement of the Parties and in writing and shall not take effect until the written agreement is signed by the Parties.

2. Each undersigned representative of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Order and to execute this document.

3. Unless this Order states otherwise, whenever, under the terms of this Order, written notice is required to be given, or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change of address to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

4. The following addresses shall be used for notices and submissions required by this Order:

**As to EPA:**

Jack A. Broadbent  
Director, Air Division  
U. S. E. P. A.  
Region 9

**As to Pegasus:**

Dean Vanech  
President.  
Pegasus Power Partners, LLC  
89 Headquarters Plaza



75 Hawthorne Street (AIR-1)  
San Francisco, California 94105

North Tower, 14<sup>th</sup> Floor  
Morristown, NJ 07960

**As to ARB:**

Kathleen Walsh  
General Counsel  
Air Resources Board, Office of Legal Affairs  
P.O. Box 2815  
Sacramento, California 95812

**VI. Copies of Order:**

This Order has been issued to Dean Vanech, Pegasus Power Partners, LLC. Copies of this Order have also been sent to Robert A. Hoffman, Counsel for Pegasus, Barbara Baird, District Counsel, SCAQMD, and to Kathleen Walsh, Counsel for the California Air Resources Board.

**VII. Effect of Order:**

The entry of this Order shall not constitute an admission by Pegasus of any violation alleged herein nor of any statute or rule.

**VIII. Effective Date and Termination of this Order:**

The Termination Date of this Order shall be: (1) issuance of final ATCs to Pegasus for the Chino Project and Pegasus's submission of source test reports (after installation of LAER/CA-BACT) demonstrating compliance with all emissions limits contained in the final ATCs; (2) failure of Pegasus to comply with any term or condition of its applications for ATCs and/or the SCAQMD's draft ATCs, or with any term or

condition of an Order of Abatement issued by SCAQMD; (3) failure of Pegasus to comply with any term of this Order, or (4) April 1, 2002, whichever is earlier.

Notwithstanding the paragraph above, this Order shall terminate, after notice by EPA, if an imminent and substantial endangerment to the public health, welfare or the environment occurs. This Order shall terminate immediately upon receipt by Pegasus of the notice of termination.

**IX. Enforcement:**

Any violation of this Order may result in a civil judicial action for an injunction and civil penalties up to \$27,500 per day per violation, 42 U.S.C. §7413(b)(2). EPA may also file an action seeking criminal sanctions pursuant to Section 113(c) of the Act. 42 U.S.C. §7413(c).

**X. Opportunity for Conference and Effective Date:**

Section 113(a)(4) provides that this Order shall not take effect until Pegasus has had an opportunity to confer with EPA regarding the alleged violations. Pegasus's signature in the space provided below shall constitute its acknowledgment that it has had sufficient opportunity to confer with EPA prior to issuance of the Order. Pegasus's signature also constitutes its agreement to comply with Section IV above.

The undersigned representatives of EPA, ARB and Pegasus each certify that he or she is authorized to enter into the terms and conditions of this Order and to bind legally the respective Parties to this Order.

DATE:

U.S.E.P.A.

June 8, 2001

\_\_\_\_\_/s/\_\_\_\_\_  
Jack A. Broadbent, Director  
Air Division, Region 9

Acknowledged and Agreed:  
DATE:

PEGASUS POWER PARTNERS LLC

\_\_\_\_\_/s/\_\_\_\_\_  
By: Dean Vanech, President

DATE:

CALIFORNIA AIR RESOURCES BOARD

\_\_\_\_\_/s/\_\_\_\_\_  
Mike Kenny, Executive Officer